

1
2
3
4
IN THE UNITED STATES DISTRICT COURT
5 FOR THE WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 STEVE LEWIS, a Washington resident,)
8 Plaintiff,) NO.
9 vs.)
10 VBC MADISON LP, a Washington limited) COMPLAINT FOR
11 partnership,) DECLARATORY
12 Defendant.) AND INJUNCTIVE RELIEF
13 _____)

14 COMES NOW, Plaintiff, Steve Lewis by and through his attorneys, Conrad A. Reynoldson
15 and Felicity Chamberlain of Washington Civil & Disability Advocate for his Complaint for
16 Declaratory and Injunctive Relief to state and allege as follows:

17
18 I. OVERVIEW

19 1. The Americans with Disabilities Act (“ADA”) and the Washington Law Against
20 Discrimination (“WLAD”) require places of public accommodation to be accessible to people
21 with disabilities.

22 2. A restaurant is a place of public accommodation within the meaning of Title III of
23 the ADA, 42 U.S.C. §12181(7), and its implementing regulation, 28 C.F.R. §36.104.
Complaint for Declaratory and Injunctive

Relief
WASHINGTON CIVIL & DISABILITY
ADVOCATE
3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 428-3558

1 3. Over 27 years after the passage of the Americans with Disabilities Act, Defendant
2 discriminates against individuals with disabilities because it leases a property to places of public
3 accommodation that does not comply with the ADA's accessibility laws and regulations that
4 were enacted into law to protect persons with mobility disabilities.

5 4. Therefore, Plaintiff brings this action to end civil rights violations against persons
6 with mobility disabilities committed by Defendant VBC Madison LP, property owner of Vito's
7 Restaurant and Lounge, which is a place of public accommodation Defendant owns and leases to
8 a tenant.

9

10 **II. PARTIES**

11 5. Plaintiff, Steve Lewis, is a Washington resident and he resides in this district.

12 6. Mr. Lewis is paraplegic and unable to walk and is thus a a qualified person with a
13 disability within the meaning of the ADA and the WLAD.

14 7. Mr. Lewis uses a manual wheelchair to patronize the Vito's Restaurant and
15 Lounge at Defendant's property.

16 8. VBC Madison is a Washington Limited Partnership.

17 9. The address of VBC Madison LP is 1911 65th Ave W, Tacoma, WA 98466-6225.

18

19 **III. JURISDICTION AND VENUE**

20 10. This court has jurisdiction pursuant to 28 U.S.C. §1331, which gives district
21 courts original jurisdiction over civil actions arising in the Constitution, laws, or treaties of the
22 United States.

23 Complaint for Declaratory and Injunctive
Relief

Page 2 of 10

WASHINGTON CIVIL & DISABILITY
ADVOCATE
3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 428-3558

1 11. This court has jurisdiction pursuant to 28 U.S.C. §1333(a)(4), which gives district
2 courts jurisdiction over actions to secure civil rights under Acts of Congress.

3 12. This court has jurisdiction pursuant to 28 U.S.C. §1337, which gives district
4 courts supplemental jurisdiction over state law claims.

5 13. Venue is appropriate in this judicial district under 28 U.S.C. §1331 because the
6 practices and procedures that gave rise to the Plaintiff's Complaint for Injunctive Relief and
7 Damages occur in this district and Defendant's property lies within this district.

8

9 IV. FACTUAL ALLEGATIONS

10 14. The ADA was enacted in 1990, "[t]o establish a clear and comprehensive
11 prohibition of discrimination on the basis of disability."

12 15. The ADA prohibits places of public accommodation from providing individuals
13 with disabilities with separate or unequal benefits and services.

14 16. Defendant's property is one example of countless places of public
15 accommodation that have substantial and numerous compliance issues with the ADA.
16 (Approximately only 2% of places of public use are completely ADA compliant. Carrie Becker,
17 Private Enforcement of the Americans with Disabilities Act Via Serial Litigation: Abusive or
18 Commendable?, 17 HASTINGS WOMEN'S L.J. 93, 99 (2006).)

19 17. Title III of the ADA states in relevant part: "No individual shall be discriminated
20 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
21 privileges, advantages, or accommodations of any place of public accommodation by any person
22 who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. §
23 12182(a).

Complaint for Declaratory and Injunctive
Relief

Page 3 of 10

WASHINGTON CIVIL & DISABILITY
ADVOCATE
3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 428-3558

18. Mr. Lewis is a qualified individual with a disability within the meaning of Title III of the ADA and the Washington Law Against Discrimination.

Plaintiff

19. Mr. Lewis is a Kirkland, Washington resident.

20. Mr. Lewis is paraplegic and unable to walk and is thus a qualified person with a disability.

21. Mr. Lewis travels throughout the Seattle area on a regular basis.

22. Mr. Lewis last patronized the property within the last two years.

23. Mr. Lewis plans to return to the property in question once the alleged accessibility barriers are addressed.

Defendant's Property

24. Mr. Lewis patronized the Vito's Restaurant and Lounge on Defendant's property located at 927 9th Ave, Seattle, WA 98104.

25. Mr. Lewis used his manual wheelchair, albeit at personal risk due to existing accessibility barriers.

26. Mr. Lewis does not feel safe accessing the property as is due to the current accessibility barriers.

27. Defendant's property does not comply with the ADA's accessibility laws and regulations under either the 1991 ADA Standards for Accessible Design (1991 Standards) 2010 ADA Standards for Accessible Design (2010 Standards).

1 28. Under § 4.22.4 of the 1991 Standards and § 213 of the 2010 Standards, places of
2 public accommodations are required to provide accessible toilet stalls where toilet facilities are
3 provided.

4 29. The toilet stalls at the Defendant's property are not wheelchair accessible.

5 30. Mr. Lewis requires a compliant accessible bathroom in order to safely patronize
6 the tenant of Defendant's property using his manual wheelchair.

7 31. Mr. Lewis's attorney, Felicity Chamberlain of Washington Civil & Disability
8 Advocate, provided voluntary pre-litigation notice and an opportunity to settle this matter
9 without a lawsuit by a letter to VBC Madison LP, sent February 12, 2019.

10 32. As of the filing of this complaint, VBC Madison LP failed to respond to Ms.
11 Chamberlain's letter.

12 33. As of the filing of this complaint no alterations have been made to address these
13 alleged accessibility barriers.

14 34. Defendant's property is not safe for people who use wheelchairs because it does
15 not comply with the ADA's accessibility laws and regulations.

16 35. Defendant's property is not welcoming to people who use wheelchairs because it
17 does not comply with the ADA's accessibility laws and regulations.

18 36. The failure of VBC Madison LP to make the property comply with the ADA's
19 accessibility laws and regulations works to exclude people with disabilities from equal access
20 and enjoyment.

V. FIRST CAUSE OF ACTION
Title III of the Americans with Disabilities Act
42 U.S.C. §§ 12101 *et seq.*

37. Mr. Lewis incorporates by reference the allegations in the paragraphs above.

4 38. Mr. Lewis is paraplegic and unable to walk and is thus a qualified individual with
5 a disability within the meaning of Title III of the ADA.

6 39. Title III of the ADA states in relevant part: "No individual shall be discriminated
7 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
8 privileges, advantages, or accommodations of any place of public accommodation by any person
9 who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. §
10 12182(a).

11 40. Defendant, VBC Madison LP, owns or leases the property where the Vito's
12 Restaurant and Lounge tenant is located.

13 41. Defendant's tenant is a place of public accommodation. 42 U.S.C. § 12181(7)(B).

42. Defendant has discriminated against Plaintiff on the basis of his disability.

43. Defendant's discriminatory conduct includes but is not limited to:

- a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities;
- b. Provision of goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;
- c. Failing to make reasonable modifications in policies, practices, and/or procedures as necessary to afford the goods, services, facilities

privileges, advantages, and/or accommodations to individuals with disabilities;

- d. Failing to make alterations in such a manner that, to the maximum extent feasible, the altered portions are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs;
- e. Failing to remove barriers to individuals with disabilities where it would be readily achievable to do so.

8 44. As such, Defendant discriminates and, in the absence of the injunction requested
9 herein, will continue in the future to discriminate against Plaintiff on the basis of disability in the
10 full and equal enjoyment of the goods, services, facilities, privileges, advantages,
11 accommodations and/or opportunities at the restaurants in question in violation of Title III of the
12 Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* and/or its implementing regulations.

13 45. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
14 and Injunctive Relief has harmed Mr. Lewis, and the harm continues.

15 46. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
16 and Injunctive Relief entitles Mr. Lewis to declaratory and injunctive relief. 42 U.S.C. § 12188.

17 47. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
18 and Injunctive Relief entitles Mr. Lewis to recover his reasonable attorneys' fees and costs
19 incurred in bringing this action. 42 U.S.C. § 12205.

VI. SECOND CAUSE OF ACTION
Washington Law Against Discrimination
R.C.W. §§ 49.60.010 *et seq.*

48. Mr. Lewis incorporates by reference the allegations in the paragraphs above.

49. Mr. Lewis is a qualified individual with a disability within the meaning of the Washington Law Against Discrimination.

50. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent part: "The right to be free from discrimination because of . . . the presence of any sensory, mental, or physical disability . . . is recognized as and declared to be a civil right. This right shall include, but not be limited to: . . . (b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement"

51. Defendant, VBC Madison LP, leases out the property at 927 9th Ave, Seattle, WA 98104.

52. Defendant has violated and continues to violate §§ 49.60.010 *et seq.* of the Revised Code of Washington by violating multiple accessibility requirements under the ADA.

53. Defendant's actions constitute discrimination against persons with disabilities and violate the Washington Law Against Discrimination, Revised Code of Washington §§ 49.60.010 *et seq.*, in that persons with mobility disabilities have been and are denied full and equal enjoyment of the accommodations, advantages, facilities, privileges, and services that Defendant provides to individuals who do not have disabilities.

54. As a direct and proximate result of Defendant's discriminatory conduct as alleged in this Complaint for Declaratory and Injunctive Relief, Mr. Lewis has suffered and continues to suffer difficulty, hardship, isolation, and segregation due to Defendant's failure to remediate

55. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory and Injunctive Relief has denied Mr. Lewis the full and equal enjoyment of services that the Washington Law Against Discrimination requires.

56. Mr. Lewis has a clear legal right to access the tenants of Defendant's property under the Washington Law Against Discrimination.

57. Mr. Lewis has the right for Defendant's property to comply with the ADA's accessibility laws and regulations under the Washington Law Against Discrimination.

58. Defendant's property does not comply with the ADA's accessibility laws and regulations.

59. Because Defendant's property does not comply with the ADA's accessibility laws and regulations, declaratory and injunctive relief are appropriate remedies under the Washington Law Against Discrimination. See e.g. *Kucera v. Dep't of Transp.*, 140 Wash. 2d 200, 209 (2000).

60. Pursuant to RCW § 49.60.030(2), Mr. Lewis is entitled to declaratory and injunctive relief and to recover from Defendants his reasonable attorneys' fees and costs incurred in bringing this action.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Lewis respectfully requests that this Court:

1. Assume jurisdiction over this action;

2. Find and declare Defendant VBC Madison LP to be in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181, *et seq.* and the Washington Law Against Discrimination, Wash. Rev. Code §§ 49.60.010 *et seq.* because Defendant's property does not comply with the ADA's accessibility laws and regulations:

Complaint for Declaratory and Injunctive Relief

Page 9 of 10

WASHINGTON CIVIL & DISABILITY
ADVOCATE
3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 428-3558

1 3. Issue a permanent injunction ordering Defendant to immediately implement the
2 necessary improvements to bring the Defendant's property into compliance with the ADA's
3 accessibility laws and regulations;

4 4. Award Mr. Lewis reasonable attorneys' fees and costs as authorized by 42 U.S.C.
5 § 12205 and Wash. Rev. Code§ 49.60.030(2);

6 5. Award actual, compensatory, and/or statutory damages to Mr. Lewis for
7 violations of his civil rights as allowed under state and federal law;

8 6. Award such additional or alternative relief as may be just, proper and equitable.

9
10 DATED THIS 28th day of February, 2019,
11

12 WASHINGTON CIVIL & DISABILITY ADVOCATE
13 Attorneys for Plaintiff

14 /S/ FELICITY CHAMBERLAIN
15 Felicity Chamberlain
WSBA# 46155
16 3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 455-6430
17 felicity@wacda.com

18 /S/ CONRAD REYNOLDSON
19 Conrad Reynoldson
WSBA# 48187
20 3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 876-8515
21 conrad@wacda.com

22 Complaint for Declaratory and Injunctive
23 Relief

Page 10 of 10

WASHINGTON CIVIL & DISABILITY
ADVOCATE
3513 NE 45th Street, Suite G
Seattle, WA 98105
(206) 428-3558